

**CITY OF SCAPPOOSE**  
**REQUEST FOR PROPOSALS (RFP)**  
**Design-Build Services for Smith Road Pump Station**  
**RFP #2023-06**



**SCAPPOOSE**  
*Oregon*

**Issue Date: June 2, 2023**  
**Proposal Due Date: July 13, 2023**

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## SECTION 1 – GENERAL INFORMATION

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### 1.1 Purpose and Invitation

This Request for Proposals from the City of Scappoose invites proposals in accordance with the requirements set forth in this RFP. The Project will be implemented using the Design-Build alternative delivery method, and as such the City is seeking for a qualified firm to oversee both design and construction of the pump station. Proposals shall be evaluated using the best-value selection process as described in Section 4. At the completion of the evaluation process, the City will select the highest ranked proposer to enter into negotiation for the Design-Build Public Improvement contract.

### 1.2 Background

The City of Scappoose – population 8,058 – is located 23 miles northwest of Portland, in Columbia County, Oregon. The City’s wastewater system is comprised of seven pump stations, approximately 32 miles of gravity pipelines ranging from 4- to 30-inches in diameter, and approximately 1.4 miles of force mains. The City’s 2021 Wastewater Collection System Facilities Planning Study (CSFPS) examined the future conveyance needs of the system to meet increased demand that will be driven by population growth and a forecasted increase in commercial and industrial development.

The existing Smith Road Pump Station is located at 33334 NW EJ Smith Road in Scappoose, OR, and is the largest of seven pump stations in the collection system, with nearly half of all system flow passing through the existing pump station to reach the City’s Wastewater Treatment Plant (WWTP). The CSFPS recommended that, due to the number and extent of the deficiencies identified with the antiquated facility, the pump station should be completely replaced.

**More detailed information on Smith Road Pump Station and anticipated improvements can be found on the City’s website in the [2021 Collection System Facilities Planning Study](#).** Additionally, an optional on-site pre-proposal meeting is scheduled for Thursday, June 15, where proposers will have the opportunity to ask questions and meet with key City staff for the project.

### 1.3 Project Objectives

The City’s primary objectives with respect to this Project are:

1. **Cost** – The City was awarded a \$900,000 grant from the State of Oregon’s State and Local Fiscal Recovery Fund (ARPA) for the design and construction of a replacement Smith Road Pump Station.

2. **Schedule** – Substantial completion is ***desired by December 31, 2024***. Proposers are encouraged to make recommendations as to the project schedule based on proposer’s prior experience with similar projects.
3. **Quality** – Deliver a high-quality, modern replacement for Smith Road Pump Station that increases system resiliency and redundancy.
4. **Collaboration** – Design and construct the new facility in close collaboration among the Design-Builder team, City staff, and the City’s SCADA Integrator of Record.

## 1.4 Schedule

Action	Location	Date*	Time
Solicitation Advertisement	Business Tribune, Spotlight, City Website	6/2/2023	-
Optional On-Site Visit*	33334 NW EJ Smith Road Scappoose, OR 97056	6/15/2023	9:00 AM
Deadline for Questions	Email	6/27/2023	12:00 PM
City Responses to Questions	Email, City Website	6/30/2023	4:00 PM
Proposals Due	City Hall	7/13/2023	4:00 PM
Proposal Evaluation	-	Week of 7/17/2023	-
Interviews (if held)	Microsoft Teams	Week of 7/24/2023	TBD
Notice of Intent to Award	Email	7/27/2023	TBD
Challenge Period Expires	-	8/3/2023	TBD
Contract Negotiations	-	Week of 8/7/2023	-
City Council Approval of Contract	City Council	8/21/2023	7:00 PM
Notice of Award of Contract	Email	8/22/2023	9:00 AM
Begin Contract (Estimated)	-	8/28/2023	-
Desired Substantial Completion	-	12/31/2024	-

*These dates and times indicated above are subject to change at the sole discretion of the City.*

*\*Please RSVP with the RFP Contact (see below) at least **one day** prior to the scheduled On-Site Visit.*

## 1.5 RFP Contact

All correspondence regarding this RFP should be directed to:

Charlotte Baker, Public Works Contract Administrator at (503) 543-7146, ext. 802 or [cbaker@cityofscappoose.org](mailto:cbaker@cityofscappoose.org)

### 1.6 Proposal Withdrawal

Any proposal may be withdrawn at any time before the “Proposal Due” date and the time specified in **Section 1.3**, by providing a written request for the withdrawal of the proposal to the City. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal on this or future solicitations. Proposals may not be withdrawn within the thirty days (30) following the proposal due date.

### 1.7 Addenda

If any revisions to the RFP or procurement process become necessary or desirable, the City, at its sole discretion, may issue written addenda. If issued, addenda will be posted on the City’s website alongside this RFP package.

### 1.8 Acceptance, Rejection, and Award of Proposals

The City may reject or accept any or all proposal or parts thereof, submitted in response to this RFP. The City expressly reserves the following rights to:

- a. Disregard any or all irregularities in the proposals.
- b. Reject any or all proposals or portions thereof upon finding it is in the public interest to do so
- c. Base award with respect to any or all information supplied by proposer in their proposal and the City’s investigation into the qualifications, experience, and responsibility of proposer.
- d. Cancel the contract award for the Project at any time before the execution of the contract by both parties, if cancellation is deemed to be in the City’s best interest.

### 1.9 Evaluation and Selection of Design-Build Team

An evaluation committee of at least three City staff members will be appointed to evaluate the proposals received. For scoring proposals, each member will evaluate each proposal in accordance with the **Evaluation Criteria listed and detailed in Section 3**. The evaluation committee may seek outside expertise, including but not limited to, input from technical advisors, to assist in the evaluation process.

The successful Proposer shall be selected by the following process:

- a. An evaluation committee will be appointed to evaluate submitted written proposals
- b. The committee will score proposals according to the evaluation criteria
- c. A short list of Proposers, based on the highest scores, may be selected for interviews
- d. Final scores, based on the evaluation criteria, will be determined

### Best-Value Based Selection

The City will attempt to reach a final agreement with the highest scoring proposer, based on the criteria – including price – indicated in Section 4 of this RFP. However, the City may, in its sole discretion, terminate negotiations and reject the proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the second highest scoring proposer and may continue, in the same manner, with remaining proposers until an agreement is reached.

By selecting the design-build delivery method for the Project, the City is committed to working in close collaboration with the Design-Builder to achieve the City’s objectives.

### Review

Following issuance of the Intent to Award, proposers that were not selected for contract award may seek additional clarification or debriefing, request time to review the selection procedures, or discuss the scoring methods utilized by the evaluation committee.

#### **1.10 Protest of Contract Awards**

Protests may be submitted to the City Manager only from those firms who would be awarded the contract if their protest was successful.

Protests must be in writing and received by the City Manager within seven (7) calendar days, UNLESS OTHERWISE NOTED, following the issue date of the City's Notice of Intent to Award. The protest must specifically state the reason for the protest and show how its proposal or the winning proposal was misscored or show how the selection process deviated from that described in the solicitation document. No contract will be awarded until the protest has been resolved.

Protests must be timely and must include all legal and factual information regarding the protest and a statement of the form of relief requested. Protests received later than specified or from other than the firm who would receive the contract if the protest was successful will not be considered. The exercise of judgment used by the evaluators in scoring the written proposals and interviews, including the use of outside expertise, is not grounds for appeal.

The City Manager may waive any procedural irregularities that had no material effect on the selection of the proposed firm, invalidate the proposed award, amend the award selection, request the evaluation committee re-evaluate any proposal or cancel the solicitation and begin again to solicit new proposals. The City Manager shall create a written opinion on the protest and forward that opinion to the City Council for further action. Should the City Council return the matter to the evaluation committee, the City shall issue a notice cancelling the Notice of Intent to Award.

Decisions of the City Council are final and conclude the administrative appeals process.

#### **1.11 Public Records**

Any materials submitted by the proposer shall become the property of the City unless otherwise specified. During the evaluation of proposals and the selection of the firm, the proposals shall be confidential. After the selection process has been completed, the proposals shall be open to public inspection. Proposals should not contain any information which the proposers do not wish to become public. If it is necessary to submit confidential information to comply with the terms and conditions of the RFP, each page containing confidential information should be clearly marked "NOT FOR PUBLIC DISCLOSURE CONFIDENTIAL TRADE SECRETS." The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted, and any claims arising out of any public record request for such information shall be at the proposer's expense.

## SECTION 2 – SCOPE OF WORK

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The selected Design-Build team will be expected to provide a wide range of responsible and responsive professional and construction services including, but not limited to project management, planning, design, plan preparation, specifications, cost estimates, environmental permitting and construction services.

The City anticipates this project will be in two distinct phases: I.) Design; and, II.) Construction. Generally, only the major tasks under both phases along with general expectations and requirements are outlined below. The Design-Build team should outline and discuss their proposed scope of work and approach. If the Design-Build team believes that changes or additions to this scope of work will provide benefit the City's objectives for the project, they are encouraged to present their proposed changes or additions. All recommendations and information produced in this project shall comply with applicable Federal, State, and local regulations and requirements.

### PHASE I – DESIGN

- 1.1 Discovery and exploration process with City staff and SCADA Integrator of Record to evaluate design options and develop a design concept for the new Smith Road Pump Station that fulfills project objectives.
- 1.2 Develop a project plan to execute the work, including a project schedule.
- 1.3 Develop a plan for the removal of existing appurtenances at the project site.
- 1.4 Develop an interim operations plan in coordination with City staff to ensure system functionality during transition from the existing pump station to the new one.
- 1.5 Develop a plan in collaboration with the City's Integrator of Record for installation of necessary electrical, mechanical, and control equipment.
- 1.6 Develop construction plans
- 1.7 Obtain necessary permits and design review from the City and any relevant regulatory agencies, such as the Oregon Department of Environmental Quality (DEQ). DEQ requires that design must be at the 95% level in order to start review; **DEQ review is anticipated to take four weeks.** A Sensitive Lands Permit will need to be obtained from the City's Planning Department pursuant to the Scappoose Municipal Code. Additionally, a No-Rise Analysis performed by a registered professional engineer will be required by the City's Planning Department (SMC 17.84.180).
- 1.8 Prepare a final cost estimate for procuring equipment, materials, and – if applicable – subcontractors. Cost estimate should be accompanied by supporting data describing costs. The City will consider pre-procurement for equipment or materials that have long lead times.
- 1.9 Negotiate a Guaranteed Maximum Price (GMP) for Construction to complete the construction services in Phase II – Construction.

## **PHASE II – CONSTRUCTION**

2.1 Procure equipment, materials, and – if applicable – subcontractors.

2.3 Construct the Project.

2.4 Prepare and provide record drawings, Operations and Maintenance Manuals for the pump station, training instruction for City operations staff, and warranty materials.

2.5 Provide project closeout documents.



## SECTION 3 – PROPOSAL FORMAT AND SUBMISSION

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### 3.1 Proposal Submittal

Sealed proposals for the Design-Build Services for Smith Road Pump Station project will be received by the City of Scappoose until July 13, 2023 at 4:00 PM at Scappoose City Hall, 33568 E Columbia Ave., Scappoose, OR 97056. The City is not liable for any costs incurred by proposers in the preparation and/or presentation of their proposals or interviews.

Proposals must be submitted in a sealed envelope and clearly marked as follows:

**33568 E. Columbia Ave., Scappoose, Oregon 97056**

**RE: Proposal for RFP #2023-06**

Consultants must include **five** hard copies of their proposal and **an electronic copy on a USB flash drive in .PDF format**. Proposals will not be received after the date and time indicated above.

### 3.2 Proposal Format

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format as follows:

- a) **Page limit:** 22 Proposals exceeding the specified number of pages in Section 4 may be deemed non-responsive. Each side of the page is counted as one page for hard copy proposals printed double-sided. A single 11x17 format page will be counted as two pages for the purposes of this page limit.
- b) **Font size:** 11 or 12-point

### 3.3 Recycled Products Statement

Proposers shall use recyclable products to the maximum extent economically feasible in the preparation of proposals, and the selected proposer shall continue the same practice in the performance of the contract work in accordance with ORS 279B.270.

## SECTION 4 – EVALUATION CRITERIA

	Evaluation Criteria	Maximum Pages	Maximum Score
4.1	Cover Letter	1	5
4.2	Statement of Qualifications Form (Mandatory)	2	Pass/Fail
4.3	Project Understanding and Approach	5	15
4.4	Proposed Project Schedule	4	10
4.5	Price (include in SOQ Form)	-	25
4.6	Design-Build Experience (two examples required)	6	30
4.7	Design-Build Team Organization	4	10
	<i>Resumes to be attached in Appendix</i>	-	-
4.8	Proposal Clarity	-	5
	<b>Subtotal</b>	22	<b>100</b>
4.9	Interviews (if held)		100
	<b>Total</b>	-	<b>200</b>

### 4.1 Cover Letter

Provide an overview of the submittal, highlighting key points, understanding of important or critical issues and considerations for the project, and the unique experience that qualifies your firm to successfully complete the project. The letter should address the firm's willingness and commitment, if selected, to provide the services and a description of why the proposer believes they should be selected.

### 4.2 Statement of Qualifications (Mandatory SOQ Form)

- a) The name of the firm, as well as, the signature, printed name and title, telephone and fax number, and email address of the officer authorized to represent the firm in any correspondence, negotiations and sign any contracts that may result
- b) The address of the office that will be providing the service, a project manager's name, telephone number, fax number, and email address
- c) The Federal and State tax identification numbers, and the state of incorporation
- d) Indicate whether the proposer is a "Resident Bidder" as defined in ORS 279A.120
- e) Provide the Oregon Construction Contractors Board License (CCB) number for the firm or entity that will be providing the construction phase services.
- f) Design Phase Cost Range
- g) Construction Phase Cost Range

All fields on the Statement of Qualifications Form (SOQ) included in Appendix A.1 must be filled out by proposer. By signing the Statement of Qualifications, Proposer certifies that compliance with the tax laws of the State of Oregon or a political subdivision of the State of Oregon and provides a covenant to continue to comply with all applicable tax laws for the duration of this RFP's resulting contract. Proposals submitted without a complete and signed SOQ form will be deemed nonresponsive.

#### 4.3 Project Understanding and Approach

Provide a narrative description of the Design-Build team's approach for managing and performing the services for all phases of the project. The narrative should include:

- a) The firm's understanding and insights into the Design-Build project delivery method
- b) Description of the firm's preliminary understanding of the project and any identified major issues based on experience
- c) Discussion of how the design and construction phases will interface
- d) Identification of the components of the work critical to project success, including how collaboration between the Design-Builder and City staff will be managed
- e) Description of the firm's process for determining construction costs and the strategies that the firm will take to keep the project within budget

#### 4.4 Proposed Project Schedule

A proposed project timeline that identifies key tasks, milestones, and the estimated timeline for completing each portion of the work is required. Additionally, proposers are asked to indicate their availability to begin the work. Proposers are encouraged to share insights, concerns, and/or recommendations about schedule.

#### 4.5 Price

The City is seeking a qualified Design-Build team to design and construct a new Smith Road Pump Station that is within the City's budget of \$900,000 funded through the ARPA State and Local Fiscal Recovery Fund program administered by Business Oregon (Oregon Business Development Department).

All proposals will be evaluated on the Proposer's cost range and estimated total project costs throughout the project to meet the requirements of this RFP. **Proposers are not required to develop a written narrative section on this criterion. Rather, design cost and construction cost ranges should be entered on the mandatory Statement of Qualifications (SOQ) Form included in Appendix A1.**

#### 4.6 Design-Build Experience

In order to receive points under this category, proposers must provide descriptions of **two** past similar projects that exemplify proposers' qualifications and relevancy to this project. Please list the team member(s) and partners that worked on the cited projects. Each project description should include at least the following:

- a) Project and Owner name
- b) Role of proposer
- c) Location of work
- d) Budgeted and final cost of the project
- e) Start and end date of the project
- f) Owner reference contact
- g) Key Project Insights

#### 4.7 Design-Build Team Organization

Provide an overview of the Design-Build team highlighting their experience, qualifications, and technical capacities that are relevant to the project.

Briefly describe the team's key personnel and their experience, qualifications, and roles on the project.

Provide a simple chart of the proposed project team structure.

Provide resumes for the project team's key members. Each resume should not exceed two (2) pages and must show the years of experience, licenses, certifications, and relevant project experience. **Resumes should be included in an appendix.**

#### 4.8 Proposal Clarity

***Proposers do not need to provide a written response to this criterion.***

The proposal must be organized in accordance with the list of Scoring Criteria categories in Section 4. Proposals will be scored by evaluators on the following factors: proposal format; ease of finding clear, concise responses that correlate with the order of evaluation criteria in this RFP; and proposers' attention to detail. Proposals should be prepared simply and economically. Special bindings, colored displays, promotional materials, etc., are not necessary. Emphasis should be on completeness, brevity, and clarity of content.

#### 4.9 Interview

***Proposers do not need to provide a written response to this criterion.***

- a. A minimum of three (3) evaluators shall score the interviews/follow-up questions.
- b. The interviews/follow-up questions will have a maximum score of 100 points.
- c. The number of Proposers selected for interviews/follow-up questions will be, to the greatest extent practicable, at least the two highest ranked proposers based on proposal scores.
- d. Follow-up questions may be sent via email to Proposer(s) as an alternative to an interview. Proposers' responses to the follow-up questions must be received by the City via email by the deadline provided. However, the City may conduct interviews if determined necessary after conducting written follow-up questions.

## **SECTION 5 – CONTRACT REQUIREMENTS**

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### **5.1 General Contract Requirements**

The selected firm (Contractor) will complete a standard contract in the form of a Design-Build Public Improvement Contract, which shall incorporate the contract, scope of work, work schedule, schedule of rates, certificates of insurance, and the requisite bonds.

### **5.2 Payment**

The City shall pay the Contractor under contract for services performed based on the approved schedule of rates, the scope of work completed, and anticipated reimbursement expenses submitted via properly authorized pay requests. The City will make monthly progress payments within thirty (30) calendar days following receipt of properly itemized invoices.

Payment for extra work not described in the scope of work or task list will only be made when authorized in advance by the City's Project Manager in writing and authorized by the City Manager or designee's signature prior to such work being performed by the Contractor.

If the Contractor anticipates that the fee will surpass the contract's negotiated design fee figure because a task has changed and is outside the agreed upon scope of work, the Contractor shall notify the City's Project Manager in writing of the circumstances with an estimated amount that the fee is to be exceeded. The Contractor shall obtain written authorization from the City before exceeding the not-to-exceed amount. If the Contractor does work that exceeds the maximum fee amount prior to obtaining written authorization, the Contractor waives any right to collect that exceeding amount.

### **5.3 Insurance**

The Consultant shall be required to provide Errors and Omissions, Professional Liability, Workers' Compensation, General Liability, and Automobile insurance as required for compliance with the City's standards for personal services contracts. All aforementioned policies, other than Workers' Compensation and Professional Liability, shall include the City, its officers, employees, agents, and representatives as additional insureds with respect to the resulting contract with the City. Coverage will be endorsed to provide a "per project" aggregate.

A letter or Certificate of Insurance from the Contractor's insurance provider must be provided demonstrating Contractor's ability to acquire and provide the minimum limits for the required insurance as indicated in the attached sample contract.

### **5.4 Payment and Performance Bonds**

A letter from the Contractor's surety must be provided to verify the availability of a design-build bond to sufficient to cover the cost of the construction phase of the project. The surety must be authorized by law to do business in Oregon and must have an A.M. Best Company Rating of "A" or better.

### **5.5 Federal/State/Local Requirements**

The Contractor shall comply with all Federal, State, and local laws, regulations, executive orders, and ordinances applicable to the work under the resulting contract. Additionally, the proposers agree to comply with the:

- a) Title VI of the Civil Rights Act of 1964
- b) Section V of the Rehabilitation Act of 1973

- c) The Americans with Disabilities Act of 1990 and ORS 659.425
- d) All regulations and administrative rules established pursuant to the foregoing laws
- e) All other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules, and regulations

The selected contractor will be subject to the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers' Compensation coverage for all employees working under the resulting contract. The City's programs, services, employment, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sexual orientation, sex, age, marital status, disability, or political affiliation.

Every public contract that is subject to ORS 279C must include a representation and warranty from the consultant that consultant has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. The public contract must also require a covenant from the consultant to continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract and provide that a consultant's failure to comply with the tax laws of this state or a political subdivisions thereof before the consultant executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law.

By signing the cover letter required by this RFP, Contractor certifies compliance with the tax laws of the State of Oregon and its political subdivisions and provides a covenant to continue to comply with the tax laws of the State of Oregon and its political subdivisions for the duration of the contract resulting from this RFP.

This Project is funded by grant funds from the ARPA State and Local Fiscal Recovery Fund program. The sample contract includes all contract provisions that are required by the grant funder.

## **APPENDIX A**

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**A.1 Statement of Qualifications (SOQ) Form**

**A.2 Sample Contract**

**A.3 Performance Bond Form**

**A.4 Payment Bond Form**

**A.5 Selection of Retainage Form**

**A.6 Maintenance and Warranty Bond Form**



RFP #2023-06

## Statement of Qualifications (SOQ)

Legal Business Name: \_\_\_\_\_

Form and State of Incorporation: \_\_\_\_\_

Registered dba, if applicable: \_\_\_\_\_

Main Office Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal and State Tax Identification Numbers: \_\_\_\_\_

Resident Bidder per ORS 279A.120 (Yes/No): \_\_\_\_\_

Proposer acknowledges that ADDENDA NUMBERED \_\_\_\_\_ THROUGH \_\_\_\_\_ have been reviewed as part of this RFP (if applicable).

### DESIGN PHASE COST RANGE

\$ \_\_\_\_\_ to \$ \_\_\_\_\_

### CONSTRUCTION PHASE COST RANGE

\$ \_\_\_\_\_ to \$ \_\_\_\_\_

**By causing this SOQ to be executed by the undersigned and delivered to the City, the proposer makes the following representations and warranties:**

1. Proposer has read and understands the terms and conditions contained in the RFP, had the opportunity to protest any term or condition that it found unacceptable and to seek clarification of any term or condition that it does not understand, and it accepts and agrees to be bound by the terms and conditions of the RFP, including, but not limited to the contract conditions.
2. Proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.
3. Proposer has not been listed by the Oregon Construction Contractor's Board (CCB) or the Oregon Department of Administrative Services (DAS) as a person disqualified or ineligible to bid on or perform work under public contracts.
4. Proposer agrees to meet all requirements contained in the RFP if it is selected for award.
5. The undersigned is the duly authorized representative of proposer for all purposes relative to the submission of this SOQ.





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6. Proposer has examined and accepts the contract terms in the attached sample contract. Proposer is strongly encouraged to bring comments/questions to the City's attention regarding the sample contract.
7. Proposer hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.
8. Proposer agrees that its proposal is valid for sixty (60) days after the submission deadline.
9. Proposer will comply with ORS 279C.838 or ORS 279C.840, regarding the payment of prevailing rates of wage.
10. Proposer is licensed by the Construction Contractors Board (CCB) and, in addition possesses all licenses required to perform the work for which the proposal is made.

**Oregon CCB#** \_\_\_\_\_

11. ☐ **Proposer is an Oregon licensed design professional.**

☐ **Proposer is not an Oregon licensed design professional.** The Oregon licensed design professional(s) who will be providing the design services required under this RFP is/are:

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12. Proposer is able to furnish a performance bond and payment bond for the work of this RFP, has included all costs of such bonds in the Proposal amount, and if awarded a contract will furnish such bonds in accordance with ORS 279C.380(1)(a) and (b).

**Authorized Signature:** \_\_\_\_\_

**Printed Name and Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF SCAPPOOSE**  
**PUBLIC IMPROVEMENT DESIGN-BUILD CONTRACT**  
**for**  
**SMITH ROAD PUMP STATION**

This Contract is by and between the City of Scappoose ("City") and \_\_\_\_\_ ("Design-Build Contractor" or "DBC"). The City and DBC are referred to collectively as "the parties."

**1. Term**

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from \_\_\_\_\_, 2023, to \_\_\_\_\_, 20\_\_\_\_.

**2. Scope of Services**

The duties and responsibilities (hereinafter referred to as the "Services") of the DBC, including a schedule of performance, shall be as described in **Exhibit \_\_\_\_**, which is attached hereto and incorporated herein by reference. Any changes to the Agreement shall be made in writing, signed by both parties, and shall be attached to and become a part of this Agreement.

**3. Payments**

City of Scappoose shall pay the DBC, upon the submission of invoices, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted. City of Scappoose shall pay the DBC within thirty (30) days of the receipt of a properly completed and submitted invoice. The DBC may submit no more than one invoice per month.

Notwithstanding any other additional requirements of this Contract, invoices shall contain the contract number, the date(s) supplies were delivered or services were furnished; a detailed description of the supplies or services furnished, and a price breakdown showing contract prices and units. All invoices shall be submitted to City of Scappoose's Finance Department as follows:

**Dave Sukau**  
Public Works Director  
[dsukau@cityofscappoose.org](mailto:dsukau@cityofscappoose.org)  
(503) 543 – 7146, ext. 801

**Kathleen Head**  
Finance Department  
[khead@cityofscappoose.org](mailto:khead@cityofscappoose.org)  
(503) 543 – 7146, ext. 223

33568 E Columbia Avenue  
Scappoose, OR 97056

Failure to strictly comply with this provision may result in a delay in payment.

**4. Type of Contract and Compensation**

Contract Price shall not exceed **\$900,000.00** without prior written authorization.

4.1 This is a Design and Construction contract for a public improvement. The "Contract Price" is the

maximum, not-to-exceed, total amount payable under this Design and Construction Contract unless it is increased or decreased by the price of duly authorized change orders. The Contract Price is composed of the following component parts:

4.1.1 "Guaranteed Maximum Price for Construction Work" (GMP). DBC agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed the Guaranteed Maximum Price for Construction Work agreed to by the parties through the pre-construction review process. The Guaranteed Maximum Price for Construction Work is composed of:

4.1.1.1 Cost of the Work. The Guaranteed Maximum Price for Construction Work includes the Cost of the Work, more particularly described in the Scope of Work attached hereto as **Exhibit \_\_\_\_\_**.

4.1.1.2 Bonding. The Guaranteed Maximum Price for Construction Work includes the cost of bonding.

4.1.1.3 Contingency. The Guaranteed Maximum Price for Construction Work includes a contingency amount which is available for costs that are incurred in performing the Construction Work that are not included in a specific line item of the Cost of the Work, or the basis for a Change Order under the Contract Documents.

4.1.1.4 Changes to the GMP. Increases in the GMP may only be authorized by written amendment signed and executed by both parties.

4.1.1.5 GMP Savings. In the event that the actual and final GMP is less than the GMP stated in this section, the difference shall accrue to the City.

4.1.2 Design Fee. The Design Fee shall be payable to DBC on a cost-reimbursement basis up to a maximum sum of \$\_\_\_\_\_. The Design Fee shall cover constructability review, value engineering, cost estimating, design development, and all other services necessary to develop the Design Work Product, as described in the Scope of Work, attached hereto as **Exhibit \_\_\_\_\_**. If the DBC's costs for the provision of Design Services during the Design Phase exceed the maximum sum listed above in this section, the DBC shall pay such additional cost without reimbursement. The DBC shall not be entitled to any added DBC Fee or markup upon the maximum sum above. City shall pay the actual Design Fee on a cost-reimbursement basis following receipt, review, and approval of each application for payment up to the time the Construction Notice to Proceed is issued. No Design Fee or other related fees, costs, compensation, or reimbursement for Design Services shall be payable to DBC after issuance of the Construction Notice to Proceed.

4.1.3 DBC Fee. DBC's overhead and profit shall be included as a firm fixed fee of \$\_\_\_\_\_.

4.2 **Owner Savings**. If the Contract Price is less than the sum of the amount actually incurred for the

GMP, the Design Fee and the DBC Fee, the savings shall accrue to the City.

## **5. Changes in the Work**

**5.1 Price Adjustments.** Adjustments to the GMP and Contract Price required by changes in the Work beyond the stated scope (**Exhibit \_\_\_\_**) may only be made in writing and agreed to by the parties.

**5.2 Execution by City.** Only duly authorized personnel of City have the authority to execute Change Orders.

## **6. Cost of the Work**

The term “Cost of the Work” shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by the DBC in the proper performance of the Construction Services portion of the Work and specifically identified and agreed to below in this Contract, and only to the extent that they are directly related to the Project.

### **6.1 Labor Cost.**

6.1.1 Wages of constructions workers directly employed by the DBC to perform the Construction Services portion of the Work at the Site.

6.1.2 Wages and salaries of DBC’s supervisory and administrative personnel stationed at the site, and for such personnel off the Site when specifically related to the Project and with City’s Contract after review of any information and documents required by City.

6.1.3 Labor Costs associated with the Construction Work shall adhere to the prevailing wage requirements as stated in Section 9.1.13 of this Contract.

**6.2 Subcontract Cost.** Payments made by DBC to subcontractors in accordance with the requirements of the subcontracts toward completion of the Construction Work.

### **6.3 Cost of Materials and Equipment Incorporated in the Work or Stored On-Site.**

6.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.

6.3.2 Costs of materials in excess of those actually installed but required to provide a reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to City at the completion of the Work.

### **6.4 Costs of Miscellaneous Equipment and Other Items.**

6.4.1 Costs, including transportation, installation, maintenance, dismantling, and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the DBC at the Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully

consumed; provided that City at City's option may require that the DBC deliver to City (at no charge) at the end of the Project any of such items procured for this Project.

6.4.2 Costs of removal of debris from the Site.

6.4.3 That portion of the reasonable travel and subsistence expenses of DBC's personnel, but not in excess of the rates allowed State of Oregon Employees, incurred while traveling in discharge of duties connected with the Construction Work. Main office staff travel shall not be reimbursed unless approved in advance by City.

## **6.5 Other Costs.**

6.5.1 Fees and assessments for any permits, licenses, and inspections for which the DBC is required by the Contract and Contract Documents to pay.

6.5.2 Sales, use, or similar excise taxes imposed by a governmental authority which are directly related to the Construction Work and for which DBC is liable.

6.5.3 Other costs incurred in the performance of the Work if and to the extent approved in advance and in writing by City.

6.5.4 The Cost of the Work shall also include costs which are incurred by the DBC in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.

## **7. Costs Excluded from the Work**

**7.1 Costs Excluded from Cost of the Work.** The following shall not be included in the Cost of the Work and are considered part of DBC's overhead and profit:

7.1.1 Salaries and other compensation of the DBC's personnel stationed at DBC's main office or offices other than the site office.

7.1.2 Expenses of the DBC's main office and offices other than the site office.

7.1.3 Any overhead and general expenses, except as may be expressly included in Section 6 of this Contract.

7.1.4 Any cost associated with the Project not specifically and expressly described in Section 6 of this Contract.

7.1.5 The DBC's capital expenses, including interest on the DBC's capital employed for the Work.

7.1.6 Rental cost of machinery and equipment.

7.1.7 Costs due to the fault or negligence of DBC, DBC's subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.

7.1.8 The cost of corrective work, nonconforming or defective work, or warranty work.

7.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.

7.1.10 Fines and penalties.

7.1.11 Except for Early Work, the cost of the Design Phase Services. Early Work means construction services authorized by Change Order that the Parties agree should be performed in advance of City's final approval of the Design Work Product. Permissible Early Work shall be limited to early procurement of materials and supplies, and any other advance work related to critical components of the Project for which performance prior to City's final approval of the Design Work Product will materially affect the schedule of the Project.

7.1.12 Any costs in excess of the GMP.

## **8. Design Services**

### **8.1 General Standards for Design Services.**

8.1.1 The DBC agrees to provide all Design Services necessary to enable the DBC to complete the Construction Services in accordance with the Contract Documents and shall perform all Design Services to achieve orderly progress of the Work.

8.1.2 The DBC shall be responsible for correcting any inconsistencies, errors, or omissions in the Work at no additional cost to City.

8.1.3 All Design Services shall be performed by a duly qualified and Oregon-licensed Design Professional either employed by the DBC or hired by the DBC to act as a subconsultant. Because the expertise of the DBC's designated Design Professional was a material consideration in the City's selection of the DBC, the DBC agrees that it shall not substitute its Design Professional without City's prior written approval. The DBC also agrees to support Owner's efforts to create a collaborative and cooperative team between the DBC's representatives, Design Professional, and City's representatives. The DBC, however, shall remain solely liable to City for completion and timely delivery of all Work required under this Contract.

8.1.4 The DBC shall meet with City as necessary to keep the Project on-schedule, on-budget, and to update the City's representative or at the request of City for the duration of the Contract to review: 1) Project Schedule; 2) design and construction questions, concerns, and comments; 3) submittal status; 4) design, construction, and as-built record documents; and 5) any and all questions that have arisen.

8.1.5 The DBC shall provide City with copies of the Design for review, comment, and approval by City. The DBC shall not progress to the development of Construction Documents without the Owner's prior written approval of the Design.

## **8.2 Pre-Construction Review.**

8.2.1 The DBC shall provide finalized Construction Documents and a Final Construction Cost Estimate ("DBC's Estimate") for City's review and approval prior to the commencement of Construction Services. The DBC's Estimate shall include a Guaranteed Maximum Price (GMP) for Construction Work as defined in Section 7.

8.2.2 The City shall have the opportunity and right to contract for an independent construction cost estimate ("City's Estimate") based upon the finalized Construction Documents. If the City's Estimate exceeds 110% of DBC's Estimate, the DBC shall revise its design to meet City's Estimate at its own cost.

8.2.2.1 In the event the parties cannot, in good faith, negotiate value engineering of the Project to effect agreement between the City's Estimate and the DBC's Estimate, the City shall have the option to terminate this Contract under Section 50.

8.2.2.2 In the event either the City's Estimate or the DBC's Estimate indicate an inability to complete the Project without exceeding the Contract Price, the City shall have the option to terminate this Contract under Section 50.

## **9. Construction Services**

### **9.1 General Standards for Construction Services.**

9.1.1 Means and Methods: The DBC shall have control over and charge of, and shall be solely responsible for, construction means, methods, techniques, sequences, and procedures in connection with the Work.

9.1.2 Schedules: The DBC shall be responsible for maintaining the Construction Schedule and for carrying out the Construction Services in accordance with the Contract Documents.

9.1.3 Supervision: The DBC shall supervise and administer all activities associated with performance of the Construction Services.

9.1.4 Warranty: DBC guarantees all work under this Contract against defects in materials and workmanship. This guarantee shall extend from the date of completion by the City for the period of a minimum of one year, or longer, if so specified in the Contract Documents. DBC shall promptly make all necessary repairs or replacements to correct any defects in workmanship or materials for which notice in writing has been sent to the DBC from the City's authorized representative within the guarantee period. In the event DBC fails to take action to correct conditions covered by this guarantee promptly after notice of such condition, City may do so, and DBC and its surety shall be liable for the cost thereof. Normal wear and tear and the results of accidents not chargeable to DBC or its agents are excepted from the above requirements.

9.1.5 Safety: DBC shall take such precautions as may be required to ensure the safety of, and shall provide such protections as may be required to prevent damage, injury, or loss to: 1) employees of City, employees of DBC, and other persons who may be present on the Project

Site or in a position to be affected by construction activities; 2) the Project Site, and all materials and equipment to be incorporated into the Project; and 3) other property at or adjacent to the Project Site.

9.1.6 Communications: Except as may otherwise be specified in these Contract Documents, City will direct its communications to the DBC regarding Construction Services through the DBC's authorized representative.

9.1.7 Material and Equipment: DBC warrants to City that those materials and equipment incorporated into the Project, and all Construction Services performed, shall be of good quality, free from faults and defects, and in conformance with the Contract Documents.

9.1.8 Site Maintenance: DBC shall keep the Project Site free from accumulation of waste materials or rubbish caused by the DBC's operations. At the completion of the Construction Services, the DBC shall remove from and about the Project Site all the DBC's tools, equipment, machinery, surplus materials, waste materials, and rubbish.

9.1.9 Acts and Omissions: DBC shall be deemed to have complete control over and charge of acts and omissions of the Design Professional, subcontractors, subconsultants, and their agents and employees, and of all other persons performing portions of the Construction Services or on the Project Site with DBC's knowledge or permission for any purpose related to the Project.

9.1.10 Corrections: At its own expense, DBC shall correct Construction Services that do not conform to industry standards, the Construction Documents, and Contract Documents.

9.1.11 Change Orders: DBC shall prepare change orders for City's approval and execution and shall obtain City's written approval in the form of a change order, contract amendment, or City's directive, for any changes, whether minor or material, within the scope of the Project.

9.1.12 Written Amendment: DBC's duties, responsibilities, and scope of authority, as set forth in the Contract Documents, cannot be modified except by written contract amendment executed by the parties, and including all required State regulatory agency approvals, if applicable.

9.1.13 Prevailing Wage: Payment of prevailing wages is required for all workers performing Construction Services. DBC must pay daily, weekly, weekend, and holiday overtime as required pursuant to ORS 279C.540; ORS 279C.520(1); OAR 839-025-0020(2)(b).

Workers shall be paid not less than the applicable prevailing wages rates in accordance with ORS 279C.838 and 279C.840; ORS 279C.830(1)(c); OAR 839-025-0020(5)(a). Applicable prevailing wages are those in effect at the time of the project's first advertisement for bid solicitations by the City. Those rates are to be used for the duration of the project.

DBC shall submit Certified Payroll Statements along with each request for payment during the Construction Services phase of the Project.

If DBC fails to pay for labor or services, the City shall pay for them and withhold these amounts from the payments due to the DBC pursuant to ORS 279C.515; OAR 839-025-0020(2)(a).



When a project is subject to both the State of Oregon and Federal Prevailing Wage Rate Law, workers shall be paid not less than the higher of the applicable state or federal rate per ORS 279.830(1)(b), OAR 839-025-0020(6)(c).

Employer must provide a written schedule to employees showing the number of hours per day and days per week that the employee may be required to work, pursuant to 279C.520(2); OAR 839-025-0020(2)(c). Employer must promptly pay for any medical services they have agreed to pay pursuant to ORS 279C.530; OAR 839-025-0020(2)(d).

9.1.14 Pre-Construction Meeting: DBC shall attend a pre-construction meeting with City, and all subcontractors and subconsultants, as applicable.

9.1.15 Record Documents: DBC shall prepare and deliver Record Documents to City electronically and in hard copy upon completion of the Construction Services, and as a condition to final payment. DBC acknowledges that it bears sole responsibility to City for the accuracy of the information upon which the Record Documents are based.

9.1.16 Notice of Substantial Completion: DBC will issue to City's representative the Notice of Substantial Completion.

9.1.17 Punch List: City's representative will issue a complete Punch List of incomplete or defective items to the DBC within fourteen (14) calendar days after the DBC's submittal of the Notice of Substantial Completion. The DBC shall complete all Punch List items within fourteen (14) calendar days of receipt of the Punch List.

## **10. Project Schedule**

10.1 Project Schedule. The Design Schedule and Construction Schedule (collectively the "Project Schedule") approved by City shall establish the deadlines for performance and milestones for completion of Design Services and Construction Services under the Contract Documents.

10.2 Commencement of Services. DBC shall commence the Work contemplated by the Contract Documents upon complete execution of this Contract and receipt of the Design Notice to Proceed.

10.3 Completion of Project. DBC will complete the Design Work Product and Construction Documents on or before the dates set forth in the Project Schedule adopted by City. DBC shall achieve Substantial Completion and Final Completion of the Construction Services by no later than the dates set forth in the Project Schedule accepted by City.

10.4 Notices to Proceed. City will issue its Design Notice to Proceed at time of contract execution. City will issue its Construction Notice to Proceed after completion of Construction Documents sufficient to enable construction based thereon.

10.5 Time is of the Essence. All time limits stated in this Contract and the Contract Documents are of the essence. DBC's failure to deliver goods/services on time shall be a material breach of this contract. If DBC fails to deliver goods/services on time, City, at its discretion, may procure those goods/services from another source. If the price paid by City for goods/services procured from another source under this Section is higher than the price under this contract, DBC shall pay City

the difference between those prices. City may deduct that difference from any amount City owes DBC.

Alternatively, City may choose to impose Liquidated Damages in the amount of \$500 per day until the Work is substantially complete.

10.6 Time for Performance. This Contract shall take effect on the effective date of signature by both parties and the DBC shall perform this Contract through Final Completion, in accordance with the Project Schedule approved by City.

## **11. Bonding**

11.1 Performance and Payment Bonds. The DBC shall furnish City with a performance bond and payment bond as required by ORS 279C.380 and 279C.390. Attorneys-in-fact who sign bonds must file with each bond a notarized and effective copy of their power of attorney dated the same date as the bonds. Bond forms are attached hereto as **Exhibits** \_\_\_\_ and \_\_\_\_.

11.2 Public Works Bond. Every contractor and subcontractor must have a public works bond filed with the Oregon Construction Contractors' Board (CCB) before starting work on the project, unless exempt, pursuant to ORS 279C.830(2)(b)(A), OAR 839-025-0020(3)(a); ORS 279C.830(2)(b)(B), OAR 839-025-0020(3)(b).

## **12. Retainage**

12.1 Retainage Amount. Retainage in the amount of five percent (5%) of the contract price of the work completed will be held by City for up to thirty (30) days after the Project has been accepted by City in writing.

12.2 Selection of Retainage Option. ORS 279C.560 allows specific alternatives for the holding and accounting of this retainage at the option of the DBC. The Selection of Retainage Form is attached hereto as **Exhibit** \_\_\_\_.

## **13. Insurance**

During the term of this Contract, DBC shall purchase and maintain any insurance required by this Contract. DBC shall furnish acceptable certificates of insurance and additional insured endorsements to City of Scappoose within ten (10) days after award of this contract, and prior to commencement of any contract work.

DBC shall be responsible for the payment of all premiums and deductibles and shall indemnify City of Scappoose for any liability or damages that City of Scappoose may incur due to DBC's failure to purchase or maintain any required insurance.

DBC shall maintain insurance of the types and in the amounts described below. DBC shall have the right to provide a self-insured retention for these coverages in an amount not-to-exceed \$2,000,000.00.

### **(1) Commercial General Liability Insurance**

Commercial General Liability insurance, with coverage limits not less than:

- (a) \$2,000,000.00 per occurrence, bodily injury, and property damage; and
- (b) \$3,000,000.00 general aggregate, bodily injury, and property damage.

Such coverage will be equivalent to or better than the Insurance Service Office (ISO) standard coverages, conditions, and extensions, and shall not contain limitations or exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products and-Completed Operations, Independent Contractors, Fire, Legal Liability, and Explosion, Collapse, and Underground (XCU).

**(2) Professional Liability Insurance**

DBC shall obtain, at DBC's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per claim shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

**(3) Business Auto Liability Insurance**

Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:

- (a) Bodily injury: \$1,000,000.00 per person; \$1,000,000.00 per accident; and
- (b) Property damage: \$1,000,000.00 per accident.

**(4) Worker's Compensation Insurance**

Oregon statutory workers' compensation and employer's liability coverage, including broad form all states protection, if applicable, voluntary compensation and Federal endorsement. Employer's liability coverage shall have the following limits:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit

Contractors who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing, stating the Contractor's qualification for exemption under

ORS 656.027.

Failure of City to demand certificates of insurance, additional insured endorsements or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of DBC's obligation to maintain such insurance.

The insurance required under this Paragraph shall:

- (1) Include (as evidenced by endorsement) City and its directors, officers, representatives, agents, and employees as additional insureds with respect to work or operations connected with the contract (excluding Professional Liability and Worker's Compensation policies);
- (2) Require DBC to give City not less than thirty (30) days written notice prior to termination, cancellation, or non-renewal of coverage;
- (3) Insurance policies shall be purchased only from insurance companies that meet City A.M. Best Rating criteria of "A-" or better (excluding SAIF) and are authorized to do insurance business in Oregon;
- (4) DBC will cause its underwriters of insurance policies to waive their rights of subrogation arising from the work performed under this Contract.
- (5) DBC's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

#### **14. Indemnification**

- A. To the fullest extent permitted by law, DBC agrees to fully indemnify, hold harmless, and defend City, its elected officials, officers, employees, and agents from and against all claims, demands, losses, suits, damages, losses, attorney fees, and costs of every kind and description and expenses incidental to the investigation and defense thereof, resulting from, based upon or arising out of, or incidental, or in any way connected with any act, omission, fault or negligence in whole or in part of DBC, its agents, subcontractors, subconsultants, or employees in the performance or nonperformance of DBC's obligations under this Contract.

The obligations of DBC under this provision will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Contract. In no way shall the DBC limit its liability under this Contract.

- B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which City and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may in its sole discretion reserve, retain or apply any monies due to the

DBC under the contract for the purpose of resolving such claims; provided, however, that City may release such funds if the DBC provides City with adequate assurance of the protection of City's interests. City shall be the sole judge of whether such assurances are adequate.

**15. Termination for Convenience**

City may terminate this Contract, in whole or in part, at any time by written notice to the DBC when it is in City's best interest. The DBC shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. City of Scappoose will not be responsible for payment for any work performed after the time of termination. After termination, the DBC shall promptly submit to City its termination claim for payment. If the DBC has any property in its possession belonging to City, the DBC will account for the same, and return it to City in the manner that City directs.

**16. Termination for Default**

- A. City may, by written notice of default to the DBC, terminate this contract in whole or in part if the DBC fails to (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract; or (iii) Perform any of the other provisions of this contract.
- B. City's right to terminate this contract under subdivision (A) of this clause may only be exercised if the DBC does not cure such failure within 10 calendar days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Administrator specifying the failure.
- C. If City terminates this contract in whole or in part under the default provisions, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the DBC will be liable to City for any excess costs for those supplies or services. However, the DBC shall continue the work not terminated.
- D. DBC shall be paid the contract price only for completed supplies or services delivered and accepted. If it is later determined by City that DBC had an excusable reason for not performing, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of DBC, City may allow DBC to continue work, or may treat the termination as a termination for convenience.
- E. The rights and remedies of City in this Article are in addition to any other rights and remedies provided by law or under this Contract.

**17. Applicable Law and Jurisdiction**

This Contract shall be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this Contract shall be commenced and prosecuted in the courts of Columbia County, Oregon or the

U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

**18. Waiver and Nonwaiver**

- A. A waiver by one party of a right to a remedy for breach of this Contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. City's acceptance of goods or services, or payment under this Contract, shall not preclude City from recovering against DBC or DBC's surety for damages due to DBC's failure to comply with this Contract.
- B. Both parties having had the opportunity to consult an attorney regarding the provisions of this Contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

**19. Mediation**

Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Scappoose, or St. Helens, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties.

**20. Severability/Survivability**

If any of the provisions contained in this Contract are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are affected. All provisions concerning indemnity survive the termination or expiration of this Contract for any cause.

**21. Intellectual Property**

DBC shall hold harmless, defend and indemnify City, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade-name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by City as the result of the claim, including attorney fees and expert witness fees.

**22. Inspection of Services**

City has the right to inspect and test all supplies/services called for under the contract, to the extent practicable, at all times and places during the term of the contract. City shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the supplies or services do not conform with contract requirements, City may require the DBC to replace the supplies or perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in supplies or services cannot be corrected by re-performance, City of Scappoose may (1) require the DBC to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the supplies/services performed.

If the DBC fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, City may (1) by contract or otherwise, perform the services and charge to the DBC any cost incurred by City or (2) terminate the contract for default.

## **23. Title and Risk of Loss**

If this Contract is for the supply of goods, DBC shall bear the risk of loss until the goods have been delivered to the site designated by City and an authorized City employee or agent has taken possession of them. Title to goods shall pass to City upon City's payment for those goods. If this Contract is for the rental or lease of DBC's goods, the DBC shall bear the risk of loss to DBC's goods. DBC agrees to carry insurance to cover any such losses. Title to the DBC's goods shall remain with DBC while goods are in City's possession. If this Contract is for the repair or servicing of City of Scappoose owned goods, DBC shall bear the risk of loss until the goods have been delivered to the site designated by City and an authorized City employee or agent has taken possession of them. Title to City owned goods shall remain with City while goods are in DBC's possession. DBC agrees to carry insurance to cover any losses/damages to City's goods while in DBC's possession.

## **24. Acceptance, Rejection, and Revocation of Acceptance**

If this Contract is for the supply of goods or equipment, then City shall be deemed to have accepted goods only after the goods have been delivered by DBC, and City has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, City may reject any goods that fail to conform to the requirements of this Contract. City may revoke its acceptance of goods that fail to conform to this Contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if City has started using the goods before discovering that they do not conform to the contract. Upon request by City, DBC shall replace or repair to City's satisfaction any goods that have been rejected by City or the acceptance of which has been revoked by City under this Paragraph. Failure to replace or repair those goods within a reasonable time after City's request shall be a material breach of this Contract.

## **25. Audit and Inspection of Records**

- A. DBC shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. DBC shall permit the authorized representatives of City, to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of DBC relating to its performance under this Contract until the expiration of three (3) years after final payment under this Contract.
- B. DBC further agrees to include in all of its subcontracts under this Contract a provision to the effect that the subcontractor agrees that City, or any of their duly authorized

representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor.

- C. The periods of access and examination described in subparagraphs A and B of this Section for records that relate to (1) disputes between City and DBC, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

## **26. Project Managers**

The DBC's designated Project Manager shall be the DBC's representative for the administration of the contract documents and the supervision of the work. In all matters relating to the performance of the work and payment therefore, and in all situations involving actual, recommended or, proposed changes, City shall accept commitments and instructions of the DBC only from the Project Manager or a duly authorized representative of the Project Manager so designated in writing

### **City's Representative and Project Manager for this Contract is:**

Dave Sukau, Public Works Director, at (503) 543 – 7146 ext. 801 or [dsukau@cityofscappoose.org](mailto:dsukau@cityofscappoose.org)

### **City's Wastewater Treatment Contact:**

Kevin Turner, Wastewater Treatment Supervisor, at (503) 543 – 7146 ext. 810 or [kturner@cityofscappoose.org](mailto:kturner@cityofscappoose.org)

### **DBC's Project Manager for this Contract is:**

\_\_\_\_\_ at \_\_\_\_\_ (tel.) or  
\_\_\_\_\_ (email).

## **27. Notices and Communications**

All notices and other communications concerning this Contract shall be written in English and shall bear the contract number assigned by City. Notices and other communications may be delivered personally, by telegram, facsimile, or by regular, certified or registered mail.

A notice to City will be effective only if it is delivered to that person designated in writing in either a) the Notice of Award of this Contract, b) the Notice to Proceed under this Contract, or c) to another individual specifically designated by this Contract. A notice to the DBC shall be effective if it is delivered to the individual who signed this Contract on behalf of DBC at the address shown with that signature, to a corporate officer if DBC is a corporation, to a general partner if DBC is a partnership, or to another individual designated in writing by the DBC in the contract or in a written notice to City.

## **28. DBC's Status and General Responsibilities**

DBC is an Independent Contractor for all purposes and is entitled to no compensation from City



other than that provided by this Contract. DBC shall inform City of DBC's Federal Employer Identification Number, or, if DBC is an individual with no employer identification number, DBC's Social Security Number. The DBC and its officers, employees, and agents are not officers, employees or agents of City as those terms are used in ORS 30.265. The DBC, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so.

DBC shall provide and pay for all professional services, labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this Contract specifically provides otherwise. DBC shall supervise and direct contract performance using its best skill and shall be responsible for selecting the means of contract performance. If, during or after the term of this Contract, DBC learns of any actual or potential defect in the services provided under this Contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this Contract or of Federal, state, or local law, DBC shall inform City immediately in writing with a full description of the defect, problem, or nonconformance.

**29. Assignment and Sub-contracting**

DBC shall not assign any of its rights or subcontract any of its responsibilities under this Contract without the prior written consent of City. DBC shall include in each subcontract any provisions necessary to make all of the provisions of this Contract fully effective. DBC shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

**30. Prompt Payment**

The DBC agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the DBC receives from City. The DBC agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City.

**31. Liens Prohibited**

DBC shall not permit any lien or claim to be filed or prosecuted against City, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, DBC shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at DBC's sole expense.

**32. Nondiscrimination**

During the term of this contract, DBC shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, disability or national origin.

**33. Compliance with Laws and Regulations**

DBC acknowledges that the Oregon Government Standards and Practices laws ("Ethics Laws"), as set forth in ORS 244.010 et seq. are applicable to contractors when performing certain work on behalf of City under contract and that the individual employees and agents of DBC may be treated as public officials under ORS 244.020 (14). DBC agrees to determine whether and under what circumstances it or its agents are subject to the Ethics Laws, as referenced herein and incorporated by reference, and shall comply and ensure compliance by those subject to DBC's control when performing work under this Contract.

**34. Prohibited Interests**

No City Council member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned) shall have any direct or indirect interest in this contract or its proceeds during, or within one year after, that person's tenure with City, except to the extent such interest is permitted and disclosed as may be required under applicable law and City policy.

No City Council member, officer, employee, or agent (or any member of the immediate family or the partner of any of the aforementioned) shall solicit or accept, and DBC shall not offer or give to any City Council member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned), any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and City policy.

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

**35. Representation of Clients with Development Applications in Scappoose**

The City requires that services provided pursuant to this Agreement shall be provided to the City by a contractor, which does not represent clients with development applications in the City. If DBC represents Clients in other jurisdictions that have business in the City, DBC shall inform the City of that representation within seven (7) business days of the date of execution of this Agreement.

**36. Safety**

Notwithstanding any safety provisions elsewhere in this Contract, and in addition to DBC's own safety procedures, DBC shall implement and enforce all safety requirements that are standard in the industry and/or that are required by City's Safety Department.

**37. Paragraph Headings and Other Titles**

The parties agree that paragraph headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.

**38. Integration, Modification, and Administrative Changes**

This Contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Contract may be modified in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. City reserves the right to make administrative changes to the contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

**39. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for whom they sign to make this Contract.

**40. Certificate of Oregon Tax Law Compliance**

By signature hereto, both parties agree to this Contract as written. DBC affirms, under penalty of perjury as provided in ORS 305.385(6), that to the best of its knowledge it is not in violation of any Oregon Tax Laws set forth at ORS Chapters 118, 314, 316-18, 321 and 323 and the elderly rental assistance program under ORS 310.630-310.706; under ORS 320.005-320.150; under ORS 403.200–403.250 and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

**41. Registration in SAM.gov**

DBC shall register in the System for Award Management (SAM), which is the primary registrant database for the U.S. Federal Government and shall update the information at least annually after the initial registration and maintain its status in the SAM through the Term of this Agreement. Information regarding the process to register in the SAM can be obtained at SAM.gov.

**42. Whistleblower Protection**

DBC receiving ARPA funds shall under or through this contract post notice of the rights and remedies provided to whistleblowers under the No Fear Act, Pub. L. 107-174. 29 CFR § 1614.703 (d).

**43. Inspections (Information)**

DBC shall permit, and cause its subcontractors to allow the State of Oregon, the U.S. Federal Government, and any party designated by them to:

- A. Examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the project.
- B. Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports

and information as reasonably requested.

- C. Interview any officer or employee of the DBC, or its subcontractors, regarding the Project.

**44. Equal Opportunity**

DBC shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

**45. Copeland “Anti-Kickback” Act**

DBC shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from including, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**46. Debarment and Suspension (Executive Orders 12549 and 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**47. Prohibition on Purchasing Telecommunications or Surveillance Equipment, Services, or Systems**

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies or ZTE Corporation (or any subsidiary or affiliate of such entities). Prohibitions extend to the use of federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or serviced produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

**48. Preference to United States-Made Goods**

As appropriate and to the extent consistent with law, the DBC should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the applications of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**49. Procurement of Recovered Materials over \$10,000**

The Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**50. Termination for Cause and for Convenience**

Contractor shall address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

The Contract Owner shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Contract Owner shall exercise this option by giving DBC written notice of termination. The notice shall specify the date on which termination shall become effective.

**51. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) for Awards to Contractors and Subcontractors in Excess of \$100,000**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract,

grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**52. Contract Work Hours and Safety Standards Act**

The Contract Work Hours and Safety Standards Act requires all contractors—prime and sub—to pay laborers and mechanics performing on a federal service contract and federal and federally assisted construction contract over \$100,000, 1.5 times their basic rate of pay for all hours worked over 40 in a workweek. Employers are liable to employees for these unpaid wages. The failure of a contractor to comply with this Act may also result in liability under the False Claims Act. Employees who are due unpaid wages under the Contract Work Hours and Safety Standards

Act may file a complaint with the Wage and Hour Division within the U.S. Department of Labor. The DOL may then enforce the provisions of the Act against violators.

**53. Compliance with Federal Environmental Acts**

DBC shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

**54. Simplified Acquisition Threshold as of 2022**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Upon any breach of this Agreement by DBC, the Contract Owner shall have all remedies available to it both in equity and/or at law.

**55. Complete Agreement**

This Agreement, including the exhibits and any documents submitted in conjunction with the associated RFP, is intended both as a final expression of the Agreement between the Parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibits, the provision in the main body of the Agreement shall control. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. DBC, by the signature of its authorized representative, hereby acknowledges that they have read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly authorized undersigned officer and DBC has executed this Agreement on the date hereinabove first written. Contract was awarded by Scappoose's City Council acting as the City's Local Contract Review Board at their meeting on

**CONTRACTOR**

**CITY OF SCAPPOOSE**

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address:

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Federal Employer Identification Number



**A.3 PERFORMANCE BOND**

**Smith Road Pump Station**

**FOR**

**CITY OF SCAPPOOSE**

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, \_\_\_\_\_,  
as Principal, and \_\_\_\_\_,  
a corporation duly authorized to do business in the State of Oregon as Surety, are jointly and severally held and bound unto the City of Scappoose (County of Columbia, State of Oregon) in the sum of \_\_\_\_\_ for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS \_\_\_\_\_, the Principal herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into an agreement with the City of Scappoose (County of Columbia, State of Oregon), the Obligee herein, the complete terms and conditions of which are contained in the document entitled "Contract Documents for the Smith Road Pump Station Project," all as hereto attached and made a part hereof, whereby the Principal undertakes to do all labor, furnish all equipment, and furnish all material in accordance with all the terms and conditions set forth in the Contract Documents; and promptly to make payment for all labor, services, and material and promptly pay sums due the Industrial Accident Fund and State Unemployment Compensation Fund and all sums required to be paid over to the Department of Revenue pursuant to the Personal Income Tax Act of 1969 as amended; and to save harmless the Obligee from any reason of the work, as set out more fully in the Contract Documents; and to do and perform all things in the Contract Documents required, in the time and manner and under terms and conditions therein set forth; and in conformity with all laws, State and Federal, applicable thereto, including but not limited to the requirements of Oregon Revised Statutes Chapter 279C relating to public contracts, which is hereby made a part hereof as if fully copied herein.

NOW, THEREFORE, if the Principal herein shall in the time and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in the Contract undertaken, and as by law, State and Federal prescribed, then this obligation shall be void, but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following further conditions:

- a) In no event shall the Surety be liable for a greater sum than the penalty of this Bond, or subject to any suit, action, or proceeding thereon that is instituted later than the period of time allowed by the applicable State or Federal Regulation after the complete performance of the Contract and final settlement thereof.
- b) The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this Bond, and

it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, the parties hereto have caused this Bond to be executed, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Resident Agent

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**A.4 PAYMENT BOND**  
**Smith Road Pump Station**  
**FOR**  
**CITY OF SCAPPOOSE**

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, \_\_\_\_\_,  
as Principal, and \_\_\_\_\_,  
a corporation duly authorized to do business in the State of Oregon as Surety, are jointly and severally held and bound unto the City of Scappoose (County of Columbia, State of Oregon) in the sum of: \_\_\_\_\_ for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS \_\_\_\_\_, the Principal herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into an agreement with the City of Scappoose (County of Columbia, State of Oregon), the Obligee herein, the complete terms and conditions of which are contained in the document entitled "Contract Documents for the Smith Road Pump Station Project," all as hereto attached and made a part hereof, whereby the Principal undertakes to do all labor, furnish all equipment, and furnish all material in accordance with all the terms and conditions set forth in the Contract Documents; and promptly to make payment for all labor, services, and material and promptly pay sums due the Industrial Accident Fund and State Unemployment Compensation Fund and all sums required to be paid over to the Department of Revenue pursuant to the Personal Income Tax Act of 1969 as amended; and to save harmless the Obligee from any reason of the work, as set out more fully in the Contract Documents; and to do and perform all things in the Contract Documents required, in the time and manner and under terms and conditions therein set forth; and in conformity with all laws, State and Federal, applicable thereto, including but not limited to the requirements of Oregon Revised Statutes Chapter 279C relating to public contracts, which is hereby made a part hereof as if fully copied herein.

NOW, THEREFORE, if the Principal herein shall promptly pay all persons furnishing labor, services, material, or insurance to the Principal, or to their subcontractors, or to their assigns, on or about the work; and shall save harmless the Obligee, its officers and agents, from all claims therefore; and shall pay all sums due the Industrial Accident Fund, the State Unemployment Compensation Fund and all sums required to be paid over to the Department of Revenue pursuant to the Personal Income Tax Act of 1969, then this obligation shall be void, but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following further conditions:

- a) All material men and all persons who shall supply such laborers, mechanics of subcontractors with material, supplies, or provisions for carrying on such work, shall have a direct right of action against the Principal and Surety on this bond, second only to the right of the Obligee under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such rights of action shall be asserted in a proceeding instituted in the name of the Obligee to the use and benefit of the

person, firm or corporation instituting such action and of all persons, firms, or corporations having claims hereunder shall have the right to be made a party to such proceeding (but not later than two years after the complete performance of the contract and final settlement and judgment rendered thereon).

- b) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action, or proceeding thereon that is instituted later than the period of time allowed by the applicable state or federal regulation after the complete performance of the contract and final settlement thereof.
- c) The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications.
- d) It is understood and agreed that the surety shall be liable for payment of wages in an amount not less than the applicable prevailing rate of wages as of the date of the bid opening to each and every person who may be employed in the performance of the contract or any part of the contract.

IN WITNESS WHEREOF, the parties hereto have caused this Bond to be executed, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Countersigned:

\_\_\_\_\_

Resident Agent

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SELECTION OF RETAINAGE OPTION

WHEREAS, the Contractor either intends to enter or has entered into a certain contract with the City of Scappoose for the Smith Road Pump Station Project. Retainage in the amount of five percent (5%) of the contract price of the work completed will be held by the City for up to thirty (30) days after the project has been accepted by the City in writing. Oregon law (ORS 279C.560) allows specific alternatives for the holding and accounting of this retainage at the option of the Contractor. FAILURE TO EXECUTE AND SUBMIT THIS FORM PRIOR TO PREPARATION OF THE FIRST PROGRESS PAYMENT WILL RESULT IN AUTOMATIC SELECTION OF THE FIRST OPTION.

The Contractor elects the following option in providing for retainage for the above-named project. (Check one only.)

\_\_\_1. The City will withhold payment and invest the retainage with the City investment portfolio. Interest on the account will accrue to the Contractor. Funds in the account will be released to the Contractor within thirty (30) days of acceptance of the project.

\_\_\_2. The Contractor will set up an interest-bearing account in a commercial bank or trust company in \_\_\_\_\_, Oregon \_\_\_\_\_ (name of lending institution) in the name of the City of Scappoose. The City will place the five percent (5%) retainage, withheld from each progress payment, into the interest-earning account. Funds in the account will be under the control of the City and will be released and will be released to the Contractor within thirty (30) days of final acceptance of the project. Interest on the account will accrue to the Contractor.

Bank Contact: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_

\_\_\_3. Before the first progress payment is made, the Contractor will deposit acceptable bonds or securities, equal to at least five percent (5%) of the contract amount, with the City or with a bank or trust company in Oregon. The bank or trust company will provide a safekeeping receipt to the City. **The securities must cover all of the retainage.**

Acceptable bonds and securities to be held in lieu of retainage:

1. Bills, certificates, notes, bonds, or other obligations of the United State, its agencies, or its wholly-owned corporations.
2. Indebtedness of the Federal National Mortgage Association.

The Contractor will deposit \_\_\_\_\_

\_\_\_\_\_  
(description of bonds or securities) in the amount of \$ \_\_\_\_\_ with \_\_\_\_\_ with (depository name and address) on \_\_\_\_\_ (date) and instruct the named depository to provide the City with a safekeeping receipt and to hold the bonds or securities until authorized by the City to release them.

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Company Name

---

Federal Tax I.D. Number

---

By (Signature)

---

By (Please print)

---

Title

---

Date

**A.6 MAINTENANCE AND WARRANTY BOND**

**Smith Road Pump Station**

**FOR**

**CITY OF SCAPPOOSE**

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, \_\_\_\_\_,

as Principal, and \_\_\_\_\_,

a corporation duly authorized to do business in the State of Oregon as Surety, are jointly and severally held and bound unto the City of Scappoose (County of Columbia, State of Oregon) in the sum of:

\_\_\_\_\_ for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS \_\_\_\_\_, the Principal herein on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into an agreement with the City of Scappoose (County of Columbia, State of Oregon), the Obligee herein, the complete terms and conditions of which are contained in the document entitled "Contract Documents for the Smith Road Pump Station Project," all as hereto attached and made a part hereof, whereby the Principal undertakes to do all labor, furnish all equipment, and furnish all material in accordance with all the terms and conditions set forth in the Contract Documents; and promptly to make payment for all labor, services, and material and promptly pay sums due the Industrial Accident Fund and State Unemployment Compensation Fund and all sums required to be paid over to the Department of Revenue pursuant to the Personal Income Tax Act of 1969 as amended; and to save harmless the Obligee from any reason of the work, as set out more fully in the Contract Documents; and to do and perform all things in the Contract Documents required, in the time and manner and under terms and conditions therein set forth; and in conformity with all laws, State and Federal, applicable thereto, including but not limited to the requirements of Oregon Revised Statutes Chapter 279C relating to public contracts, which is hereby made a part hereof as if fully copied herein.

WHEREAS the Principal has completed the improvements and has applied to the Obligee to accept the improvements and in connection therewith, the Principal has agreed to guarantee the work performed against any and all defects in workmanship and materials for one (1) year from the date of acceptance of the improvements as determined by certification of the City of Scappoose, Oregon, the date of completion being certified as \_\_\_\_\_, 20\_\_\_\_. Should corrections in the work be required due to defects in materials and/or workmanship during the one-year period, then as to such corrective work the period shall be extended for and cover to the same extent as if within the original one-year period for an additional one (1) year period from the date of acceptance of the corrective work as certified by the City of Scappoose, Oregon.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall guarantee the work performed under the Contract against any and all defects in workmanship and materials for the period of one (1) year from acceptance of the completed work and any corrective work performed under the



guarantee, as certified by the City of Scappoose, then this obligation shall be void, otherwise to remain in full force and effect.

SIGNED and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_).

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Resident Agent

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_